IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.74 OF 2005

Abdul Haque Shaikh Mehrabakhsh
& Ors. ..Petitioners.

Vs.

Municipal Corporation of Greater
Bombay & Ors. ..Respondents.

....

Mr. H. Toor with Mr. Krishna Tanna i/b M/s. S.K. Legal Associates for the Petitioners.

Mrs. A.R. Joshi for the BMC.

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CORAM : DR.D.Y.CHANDRACHUD, J.

25th January, 2005.

P.C. :

1. Rule, made returnable forthwith. Counsel appearing on behalf of the Respondents waives service. By consent taken up for hearing and final disposal.

2. Petitioner Nos.1 to 3 are the owners of a plot

of land admeasuring 716 sq. yds. bearing Cadestral Survey No.1357, Mahim Division. By an agreement for development dated 9th April, 2003, the aforesaid Petitioners have assigned the development rights in respect of the property to the Fourth Petitioner. Prior to 1st October, 2003 a structure was standing on the aforesaid property which was in the occupation of tenants. The rateable value was determined at Rs.12,725/- per annum. In pursuance of an application for development an intimation of disapproval came to be issued by the Municipal Corporation on 17th June, 1997 and a commencement certificate on 8th May, 2003. On 25th March, 2004 special notices were issued by the Municipal Corporation under Sections 162(2) and 167 of the Mumbai Municipal Corporation Act, 1888 proposing to revise the rateable value from Rs.12,725/- to Rs.2,50,215/- with effect from 1st October, 2003. The Petitioners filed a complaint within a period of 15 days as required by their letter dated 3rd April, 2004 against the proposed fixation of the rateable value. The complaint was heard by the Fourth Respondent. The grievance of the Petitioners is that they were not furnished with a Tabulated Ward Report though there

was a specific demand to that effect. The Fourth Respondent thereupon passed an order dated 24th September, 2004 fixing the rateable value at Rs.1,98,580/- with effect from 1st October, 2003. The order passed by the Fourth Respondent is not a reasoned order. The Petitioners called upon the Fourth Respondent to furnish a copy of the speaking order, if any, by a letter dated 24th September, 2004. The aforesaid demand was reiterated on 11th October, 2004. The contention of the Petitioners is that the enhancement in the rateable value is contrary to the judgment of the Supreme Court in the Municipal Corporation of Greater Bombay v. M/s. Polychem Limited (AIR 1974 SC 1779) and several judgments of this Court following the decision of the Supreme Court. The judgments of the learned Single Judge on which reliance has been placed are :

(i) Vimochit Samaj Co-operative Housing Society Ltd. v. Assessor and Collector, Mumbai (2004(3) Mh.L.J. 869)

(ii) All India Soverdia Sangam Trust v. Municipal Corporation of Greater Bombay

(2003(4)Mh.L.J.597)

(iii) Shree Suarashtra Patel Samaj v. Brihanmumbai Municipal Corporation (200(1) Mh.L.J.27)

3. Having heard the counsel appearing on behalf of the Petitioners and the counsel for the Municipal Corporation, I am of the view that the contention urged on behalf of the Petitioners has to be accepted. It is now a well settled principle of law since the judgment of the Supreme Court in Polychem (supra) that all 'land', whether vacant, or in the process of being built upon, or built upon, is rateable. However, so long as a building being constructed on some land is not in a state fit for occupation, its rateable value should not be more or less than that of land which is vacant. Land which is being built upon cannot be rated like land on which a building has been actually constructed unless the construction has reached a stage at which some occupation of the constructed portion is legally and actually possible so that it could be taken into account in determining the rateable value. In the decision of the learned

Single Judge in Vimochit Samaj Co-operative Housing Society (supra), the same position as it obtains in the present case came to be decided upon. The Corporation had contended that it had assessed the plot of land as land under construction only for the purposes of identification. The learned Single Judge held that this by itself would not empower the Corporation to treat such land differently from vacant land for the purpose of fixation of rateable value. The Corporation had in fact treated the land under construction for the purpose of revision of the rateable value on the basis that the land was being used for construction activities though such construction was not complete. The learned Single Judge held that unless there was material available with the Corporation to the effect that the old buildings have been demolished in terms of the proposed plan and new constructions have been carried out and completed so as to render the building fit for occupation, it could not have been assessed in the manner in which the assessment was sought to be carried out. The methodology which was being adopted by the Municipal Corporation in the present case is directly contrary to the settled position in law which emerges from these

decisions.

4. In the circumstances, the impugned order dated 24th September, 2004 shall have to be quashed and set aside and is accordingly quashed and set aside. The Municipal Corporation shall now take necessary steps in accordance with law for the purposes of completing the assessment. The payment which has been made by the Petitioners in the amount of Rs.1,50,000/- shall be subject to adjustment and shall abide by such assessment which will be carried out in accordance with law. The Municipal Corporation shall carry out the assessment after furnishing to the Petitioners an opportunity of being heard. The Petition is accordingly disposed of. No order as to costs.